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W.P.No. 2663 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23.02.2024

CORAM

THE HONOURABLE MR.JUSTICE BATTU DEVANAND

W.P.No. 2663 of 2018

and

W.M.P.No. 3290 of 2018

S. Mahabou John

... Petitioner

Vs.

1.The Secretary to Government,
Municipal Administration & Water Supply Department,
Fort St. George, Chennai – 600 009.

2.The Director of Municipal Administration,
Chepauk, Chennai – 5.

3.The Director of Local Fund Audit,
Integrated Complex for Finance Department,
Animal Husbandry Hospital Complex,
Teynampet, Chennai – 600 018.

4.The Commissioner,
Madurai Corporation,
Madurai.

5.The Deputy Director of Local Fund Audit,
Madurai.

... Respondents

Writ petition is filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorari, to call for the records in pursuant to the impugned letter issued by the second respondent in proceedings Rc.Lr.No.45529/F3/2010 dated



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21.05.2015 and the consequential impugned order issued by the fourth respondent in proceedings MaNi.15/001952/17 dated 27.11.2017 and quash these orders.

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For Petitioner : Mr. R. Prem Narayan

For Respondents : Ms. Akila Rajendran, for R1 to R3 & R5
Government Advocate
Mr. Abhinav Parthasarathy, for R4

ORDER

Heard the learned counsel for the petitioner and the learned Government Advocate appearing for the respondents 1, 2, 3 and 5 and the learned counsel for the fourth respondent and perused the record.

2. The case of the petitioner is that he is a Class IV employee working as Unskilled Worker – Watchman in the fourth respondent Corporation. The Government issued G.O.Ms.No.338 Finance (Pay Cell) Department dated 26.08.2010 granting a revised scale of pay and re-designation of technical categories. The said Government Order was issued pursuant to the recommendations of the one man commission. Accordingly, based on the pre-revised scale of pay, the posts were re-classified into: -

- 1) Supervisory posts re-designated as Supervisor
- 2) Special Grade Trade Posts re-designated as Special Artisan
- 3) Grade I posts re-designated as Skilled Assistant Grade I



4) Grade II posts re-designated as Skilled Assistant Grade – II

5) Other trade posts re-designated as Unskilled.

3. Based on G.O.Ms.No.338, the category of Unskilled Workers were granted a common scale of pay of Rs.5,200-20,200+Grade pay 1,900 with effect from 01.01.2006 notionally and the monetary benefits are given from 01.08.2010. The fourth respondent also implemented the said G.O. Accordingly, the pay of the petitioner was fixed in the scale pay of 5,200-20200+1900. Subsequently, the second respondent issued certain clarifications vide proceedings in Rc.Lr.No.45529/F3/2010 dated 21.05.2015 stating that the name of 36 posts listed in Annexure B are not entitled for fixation of scale of pay as per G.O.Ms.No.338 dated 26.08.2010 and they are entitled for fixation of scale of pay as per G.O.Ms.No.234, Finance (Pay cell) Department dated 22.07.2013 and also ordered recovery of excess pay.

4. Pursuant to the proceedings dated 21.05.2015 of the second respondent, the fifth respondent directed the fourth respondent to fix the scale of pay of Skilled Worker working in the fourth respondent corporation as per G.O.Ms.No.234 Finance (Pay Cell) Department dated 22.07.2013 and also directed to recover the alleged excess pay. As per the directions of the second and fifth respondent, the fourth respondent issued the impugned order dated 27.11.2017 wherein reduction of scale



of pay granted in G.O.Ms.No.338, Finance (Pay Cell) Department dated 26.08.2010 was given and for recovery of excess pay. The said proceedings are impugned in this writ petition.

5. Learned counsel for the petitioner submits that the impugned proceedings dated 21.05.2015 issued by the second respondent and consequential order issued by the fourth respondent on 27.11.2017 wherein the reduction of scale of pay and recovery was ordered was issued without providing notice and opportunity to the petitioner and therefore, it is in violation of principles of natural justice and it is liable to be dismissed. The learned counsel for the petitioner further submits that as the petitioner is a Group D employee, as such, the respondents are not entitled to order for recovery, as per the settled law. Accordingly, the learned counsel sought to allow the writ petition by setting aside the impugned order.

6. On behalf of the respondents, the third respondent filed counter affidavit on behalf of the fifth respondent. The fourth respondent filed counter affidavit. But the second respondent against whose order this writ petition is filed and which is the basis for passing the consequential order by the fourth respondent did not choose to file his counter affidavit.



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7. In the counter affidavit filed by the fourth respondent, it is averred that the first respondent has issued G.O.Ms.No.338 Finance Department pursuant to the recommendations of the one man commission for the revised scale of pay to the trade post. As per the request of the petitioner, the Madurai Corporation has granted the revised scale of pay and paid the arrears to the petitioner. But the said G.O.No.338 is applicable only for the employees who are working in the trade post. Hence, as per the Government Letter No.455299/F3/2010 dated 21.05.2015, the fourth respondent had revised the scale of pay and the same was re-fixed and hence, the excess payment that was paid was ordered to be recovered from the monthly salary payable to the petitioner as per proceedings dated 27.11.2017.

8. It is further averred that as the petitioner is working as Unskilled Workers which falls under the unskilled category i.e., non technical posts, the pay scale applicable to him is only as per G.O.Ms.No.234 Finance (Pay cell) Department dated 01.06.2009, since there is no technical expertise required for his job wherefore, the scale of pay was rightly fixed.

9. Learned Government Advocate appearing for the respondents 1, 2, 3 and 5 submits that as per the proceedings dated 21.05.2015 of the second respondent technical categories in various municipal services were grouped and re-designated



with the revised scale of pay. It is made it clear in the said proceedings that the higher scale of pay fixed by virtue of the letter dated 19.06.2014 was cancelled and the pay of the individual petitioner was to be fixed with respect to the instructions issued vide proceedings dated 21.05.2015.

10. Learned Government Advocate further contends that since the petitioner is working in a non technical posts which falls under the unskilled categories, the pay scale applicable to him is only as per G.O.Ms.No.234 Finance (Pay cell) Department dated 01.06.2019 and hence, the scale of pay was rightly fixed and no interference is warranted in this writ petition and sought to dismiss the writ petition.

11. Learned counsel for the fourth respondent would submit that as per the Government Order issued in G.O.Ms.No.338 Finance (Pay Cell) Department dated 26.08.2010, the fourth respondent has granted the revised scale of pay and paid the arrears to the petitioner but the second respondent issued certain instructions vide proceedings dated 21.05.2015. Based on the said instructions, the respondents 3 and 5 instructed the fourth respondent to take action as per second respondent order dated 21.05.2015. Accordingly, the fourth respondent revised the scale of pay and excess payment that was paid to the petitioner was ordered to be recovered vide proceedings dated 27.11.2017. Learned counsel further contends that the fourth



respondent has implemented the instructions issued by the second respondent on 21.05.2015 only and as such, there is no irregularity or illegality in the order passed by the fourth respondent to re-fix the pay of the petitioner and for ordering recovery of the excess payment and sought to dismiss the writ petition.

12. Heard the submissions of the respective counsel and upon careful examination of the materials available on record, it is an admitted fact that the petitioner has been working as Class IV employee classified as Unskilled Worker / Watchman in the fourth respondent corporation. Pursuant to the G.O.Ms.No.338 Finance (Pay Cell) Department dated 26.08.2010 the pay of the petitioner was revised and arrears were paid to him. It appears, subsequently, the second respondent issued certain clarification in his proceedings dated 21.05.2015 and instructed the fourth respondent to revise the pay scale of the petitioner and to effect recovery of excess payment. Pursuant to the order dated 21.05.2015 of the second respondent, the petitioner's pay was re-fixed and ordered for recovery of the alleged excess payment made to the petitioner vide proceedings dated 27.11.2017.

13. On careful perusal of the proceedings issued by the fourth respondent dated 27.11.2017, it appears that before taking decision for the re-fixation of the scale of pay of the petitioner or before ordering for recovery of alleged excess



payment, no notice was issued to the petitioner calling for his objections. It also appears that opportunity for personal hearing also not accorded to the petitioner to put forth his version before the second respondent. In the proceedings issued by the second respondent on 21.05.2015 also there are no instructions issued to the fourth respondent to issue notice to the petitioner before revising the pay scale of the petitioner or to order for recovery of the excess payment to put the petitioner on notice.

14. In view of the same, in the considered opinion of this Court, the orders impugned in this writ petition, issued by the second and fourth respondent are in violation of principles of natural justice. As such, the order of the fourth respondent dated 27.11.2017 is liable to be set aside.

15. In fact, on several occasions, identical issue came up for consideration before this Court. By following the proposition of law laid down by the Hon'ble Apex Court in ***Rafiq Masih (White Washer) (supra)***, this Court set aside the proceedings of recovery in ***W.P.No.6945 of 2022, dated 26.06.2023*** and in ***W.P.(MD) No.16106 of 2016, dated 20.07.2023***. The relevant portion of the judgment of the Hon'ble Apex Court in ***Rafiq Masih (White Washer) (supra)***, is extracted hereinunder:



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“18. It is not possible to postulate all situations of hardship, which would govern employees on the issue of recovery, where payments have mistakenly been made by the employer, in excess of their entitlement. Be that as it may, based on the decisions referred to herein above, we may, as a ready reference, summarise the following few situations, wherein recoveries by the employers, would be impermissible in law:

(i) Recovery from employees belonging to Class-III and Class-IV service (or Group C and Group D service).

(ii) Recovery from retired employees, or employees who are due to retire within one year, of the order of recovery.

(iii) Recovery from employees, when the excess payment has been made for a period in excess of five years, before the order of recovery is issued.

(iv) Recovery in cases where an employee has wrongfully been required to discharge duties of a higher post, and has been paid accordingly, even though he should have rightfully been required to work against an inferior post.

(v) In any other case, where the Court arrives at the conclusion, that recovery if made from the employee, would be iniquitous or harsh or arbitrary to such an extent, as would far outweigh the equitable balance of the employers right to recover.”



16. One of the guidelines relevant to the present case is that no recovery shall be effected from employees belonging to Class III and Class IV service (Group C and Group D service).

17. This Court in *W.P.(MD) No.17154 of 2016* and *W.P.(MD) No.22395 of 2016*, while dealing the identical issues, has set aside the orders for recovery impugned therein.

18. In *WP.(MD).No.24951 of 2016*, Madurai Bench of Madras High Court by its order dated 03.10.2023 and in *W.P.No.19527 of 2017, dated 11.01.2024* while dealing with the identical issue has set aside the order of recovery holding it as illegal, arbitrary, unjust and in violation of principles of natural justice.

19. In the present case, the respondents issued the impugned order for recovery of the alleged excess payment from the petitioner who is Class IV employee which is not permissible as per the settled law.

20. On the consideration of the facts and circumstances of the present case and in the light of the authorities cited supra, this Court has no hesitation to hold that the action of the respondents in issuing the impugned order of recovery is illegal,



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arbitrary and unjust and in violation of the principles of natural justice and accordingly, the impugned order passed by the fourth respondent alone is hereby set aside. If the fourth respondent intends to revise the pay scale of the petitioner as per the order dated 21.05.2015 of the second respondent, it is open to do so, but only after issuing notice to the petitioner and giving reasonable opportunity to the petitioner.

21. Accordingly, this Writ Petition is disposed of.

22. Consequently, connected miscellaneous petition is closed.

23. There shall be no order as to costs.

23.02.2024

Index :Yes/No

Neutral Citation :Yes/No

AT

To

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- 2.The Director of Municipal Administration, Chepauk, Chennai – 5.
- 3.The Director of Local Fund Audit,
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